

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Baltimore Division**

GERTRUDE TUCK,

Plaintiff,

v.

Civil Action No.

GMAC MORTGAGE,

Defendant.

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND, BALTIMORE DIVISION:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant GMAC Mortgage, LLC (“GMACM,” or “Defendant”), by counsel, hereby removes this action from the Circuit Court of Baltimore County, Maryland, to the United States District Court for the District of Maryland, Baltimore Division. As more fully explained herein, removal is proper because this Court has subject matter jurisdiction over this action under diversity jurisdiction pursuant to 28 U.S.C. § 1332.

I. BACKGROUND

1. On or about October 11, 2011 Plaintiff Gertrude Tuck (“Plaintiff”) filed a Complaint (hereinafter “Complaint”) against Defendants GMACM, Armour Settlement Services, LLC (“Armour”), and Fidelity National Title Corporation (“Fidelity”) in the Circuit Court of Baltimore County, Maryland relating to Plaintiff’s loan (the “Loan”) secured on the property located at 7206 Orth Rd., Baltimore, MD 21219 (the “Property”). A copy of the Complaint is attached hereto as **Exhibit A**.

2. Plaintiff claims that GMACM acted negligently, wantonly, and recklessly when it paid the past due taxes owed on Plaintiff's Property without seeking Plaintiff's permission first and by initiating foreclosure proceedings upon Plaintiff's default. (Comp. *passim*).

3. GMACM is an LLC organized and existing under the laws of Delaware with its principal place of business located at 1100 Virginia Drive, Fort Washington, Pennsylvania 19034. Accordingly, GMACM does not have citizenship in Maryland for purposes of determining diversity jurisdiction.

4. Armour Settlement Services, LLC ("Armour") is an LLC organized and existing under the laws of Maryland with its principal place of business in Owings Mills, Maryland.

5. Fidelity National Title Corporation ("Fidelity") is a corporation organized and existing under the laws of California with its principal place of business located at 2510 N. Redhill Ave., Santa Ana, California 92705. Accordingly, Fidelity does not have citizenship in Maryland for purposes of determining diversity jurisdiction.

6. On October 21, 2011, Fidelity filed a Motion to Dismiss Plaintiff's Complaint.

7. On November 16, 2011, Armour filed a Motion to Dismiss Plaintiff's Complaint.

8. On December 22, 2011, this Court entered an Order granting Fidelity's and Armour's motions and dismissing them from the case. A copy of the Order is attached hereto as **Exhibit B**.

II. ARGUMENT

9. This Court has original diversity jurisdiction over Plaintiff's lawsuit pursuant to 28 U.S.C. § 1332, and this action is removable under 28 U.S.C. § 1441.

10. 28 U.S.C. § 1332 states that district courts have original jurisdiction over lawsuits where there is complete diversity between the parties and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

11. The only remaining parties in this case are Plaintiff, a citizen of Maryland, and Defendant GMACM, which does not have citizenship in Maryland, as more fully described in paragraph 2 above.

12. Therefore, the citizenship status of all the parties is completely diverse.

13. Further, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

14. Section 1446(b) provides:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of [diversity] jurisdiction ... more than 1 year after commencement of the action.

15. This Notice of Removal is being filed within thirty days from December 22, 2011 when the Court entered an Order dismissing the non-diverse Defendant Armour and the case became removable.

16. In addition, this Notice of Removal is being filed within one (1) year of the date of commencement of the action for removal purposes.

17. No defendants have previously sought similar relief in this case.

18. The amount in controversy requirement is also met.

19. When determining whether the aggregate amount of a Plaintiff's claims meets the jurisdictional minimum for purposes of removal, the court may include compensatory damages and punitive damages claimed in the Complaint. *See Saval v. BL Ltd.*, 710 F.2d 1027, 1033 (4th Cir. 1983).

20. Here, the amount in controversy well exceeds the requisite \$75,000.00, exclusive of attorney fees, interests and/or costs. In her Complaint, Plaintiff asserts claims against GMACM for gross negligence under the common law of Maryland. Plaintiff claims she has suffered various actual damages, including "undue stress, emotional turmoil, loss of credit sustainability, potential employment ... , court costs and fees and damages." (Comp. ¶14). Plaintiff asks for damages in the amount of \$173,000.00, well in excess of \$75,000. (*Id.*)

21. GMACM denies the allegations in the Complaint, denies that Plaintiff has stated a claim for which relief may be granted, and denies that Plaintiff has been damaged in any manner. Nevertheless, assuming, for jurisdictional purposes only, that Plaintiff's claims are valid, the amount in controversy requirement is satisfied. Removal of this entire case is therefore proper under 28 U.S.C. § 1441.

III. VENUE

22. Venue is proper in this Court because this district and division encompass the Circuit Court of Baltimore County, Maryland, the forum from which the case has been removed. *See* 28 U.S.C. § 1441.

IV. NOTICE

23. Concurrent with the filing of this Notice, Defendants will file a copy of this Notice of Removal with the Clerk of the Circuit Court of Baltimore County, Maryland, a copy of which is attached hereto as **Exhibit C**.

24. Upon information and belief, **Exhibits A** and **B** are the only pleadings, documents and orders that have been served upon GMACM at the time this Notice of Removal is being filed.

25. Pursuant to Local Rule 103(5)(a), the undersigned counsel will file true and legible copies of all other documents on file in the state court, together with a certification from counsel that all filings in the state court action have been filed in this Court.

WHEREFORE, Defendant GMAC Mortgage LLC hereby removes this action to this Court and requests such further and other relief this Court deems appropriate and just.

Dated: January 20, 2012

Respectfully Submitted,

GMAC MORTGAGE, LLC

By: /s/ John C. Lynch
Of Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2012, a true and accurate copy of the foregoing Notice of Removal, which was electronically filed, was sent via first class mail, postage prepaid, to the following:

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